IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5026 OF 2005.

Smt.Rakhmabai M. Hyalij .. Petitioner

versus

Smt. Suman R. Chavan & Ors. ..Respondent.

Mr. Nitin Ghause for the petitioner

Mr. Haridas for the Respondent

Coram : S.R.Sathe, J.
Dated : 23rd Jan, 2006

P.C.

1. Heard both the learned Advocates.

2. Perused the papers. Rule. Returnable forthwith.

3. The Appellant Original Defendant had filed application seeking amendment in written statement under Order 6 Rule 17 in the First Appellate Court. However, the same was rejected. Hence, the Original Defendant has filed this Writ Petition.

3. By virtue of the proposed amendment the Defendant wanted to place on record that on 24.1.1980 by virtue of a registered deed, the father of plaintiff had granted certain property in her favour towards her maintenance and hence plaintiff

is in fact not entitled to claim any relief in that behalf under the alleged Will. The First Appellate Court rejected the said application on the ground that there was inordinate delay and by the proposed amendment the Defendant was trying to make out a new case and thereby cause prejudice to the Respondents. He, therefore, rejected the application.

4. It is pertinent to note that in the instant case, admittedly during the trial the above referred document was in fact produced by the Defendant and the same has been admitted in the evidence. The Defendant is an illiterate women, when she realised that such document has been executed, she immediately produced the same. In fact, when the said document was admitted, at that stage only during trial application for amendment could have been given. However, it seems that the learned Advocate appearing for the defendant did not do so. It is to be noted that the said document was not considered by the trial Court by saying that there were no pleadings in that behalf. It is true that no amount of evidence can be looked into in the absence of pleadings in that behalf. However, it must be noted that by virtue of the proposed amendment the defendant was not at all trying to

make out a totally new or inconsistent case. Even the learned Advocate for the appellant could not point out as to how the defendant is trying to make out totally inconsistent case. So, the learned First Appellate Court ought to have considered all the facts and should have allowed the amendment as it was necessary in order to decide the real controversy between the parties. What is more to be noted is that the document produced on record is a also registered document. So there is no scope for saying that stand taken by the defendant in this behalf is after thought.

. In view of above, I have no hesitation to hold that the first Appellate Court has wrongly rejected the application for amendment filed by the defendant. Hence the said order is set aside. Application for amendment filed by defendant allowed.

. Rule made absolute.

(S.R.Sathe, J.)